

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1415 – IMA-2019/010 – Tender for the Provision of Audit Services for Identity Malta Agency**

The tender was published on the 16<sup>th</sup> July 2019 and the closing date of the call for tenders was the 27<sup>th</sup> August 2019. The estimated value of the tender (exclusive of VAT) was € 27,000

On the 30<sup>th</sup> October 2019 Parker Randall Turner filed an appeal against Identity Malta Agency as the Contracting Authority on the grounds that the tender was cancelled. A deposit of € 400 was paid.

There were five (5) bidders.

On 14<sup>th</sup> January 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Randall Parker Turner**

Dr Noel Camilleri	Legal Representative
Mr Arthur Douglas Turner	Representative

#### **Contracting Authority – Identity Malta**

Dr Neil Harrison	Legal Representative
Mr Martin Bowerman	Chairperson Evaluation Committee
Ms Chantelle Tanti	Secretary Evaluation Committee
Ms Leonie Vella	Member Evaluation Committee
Mr Wilfred Saliba	Member Evaluation Committee
Mr Pablo Cachia Belli	Member Evaluation Committee
Mr Edwin Ebeyer	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Noel Camilleri Legal Representative of Parker Randall Turner said that his clients' objection was that through the cancellation of the tender they were prejudiced as the prices quoted had become known and would put them at a disadvantage when the tender was re-issued. The

cancellation should have been done *'ab initio'* and should have been awarded to the second best bid once it was found that there was a conflict of interest in the case of the preferred bidder.

Dr Neil Harrison Legal Representative of Identity Malta said that late in the day it was discovered that the preferred bidder could not be involved as they were agents for the Malta Residency Visa Programme. The matter was referred to the Department of Contracts who advised that the committee could not re-evaluate the tender but had to cancel it. The Contracting Authority acted with transparency throughout the process.

Mr Pablo Cachia Belli (544383M) called as a witness by the Public Contracts Review Board testified on oath that he was one of the evaluators of the tender. He stated that the Appellants' offer was found to be compliant after completion of the evaluation process. When the conflict of interest question arose the Departmental Contracts Committee was contacted for advice and they in turn referred them to the Department of Contracts who advised re-evaluation but apparently the system does not allow this after the first evaluation has been completed. At this stage the Department of Contracts advised cancellation.

The Chairman said that the Board must ensure that proper steps are followed in the evaluation process and in this case they feel that re-evaluation would be in order. He thanked the parties for their submissions and declared the hearing closed.

End of Minutes

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## **Decision**

**This Board,**

**having noted this objection filed by Randall Parker Turner (hereinafter referred to as the Appellants) on 30 October 2019, refers to the claims made by the same Appellants with regard to the tender of reference IMA-2019/010 listed as case No. 1415 in the records of the Public Contracts Review Board.**

**Appearing for the Appellants:**

**Dr Noel Camilleri**

**Appearing for the Contracting Authority: Dr Neil Harrison**

**Whereby, the Appellants contend that:**

- a) The fact that the Contracting Authority decided to cancel the tender due to a conflict of interest of the preferred bidder, Appellants will be at a disadvantage in participating in the new tender, when issued, as their offer and price has been made public. In this regard, Appellants maintain that the tender should not be cancelled, and the award should be made to the second-best offer.**

**This Board also noted the Contracting Authority's 'Letter of reply' dated 19 November 2019 and its verbal submissions during the hearing held on 14 January 2020, in that:**

- a) The Authority confirms that, at the award's stage of the tender, it became aware that there existed a conflict of interest pertaining to the successful bidder. The Authority sought advice from the Department of Contracts who advised a re-evaluation process. Due to the fact that the ePPS system does not allow such a procedure, after the first evaluation has been carried out, the Authority had no other option but to cancel the tender.**

**This same Board also noted the testimony of the witness namely:**

**Mr Pablo Cachia Belli Evaluator duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that, the issue that merits consideration is the cancellation of the tender.**

- 1. This Board would respectfully refer to the credible testimony of Mr Pablo Cachia Belli, one of the Evaluators, whereby this Board was made aware of the sequence of events that lead to the Authority's decision to cancel the tender.**
- 2. This Board was informed that, during the award stage of the tender, the Authority became aware of a conflict of interest pertaining to the preferred bidder. To this effect, it sought advice from the Department of Contracts who, quite appropriately, instructed a re-evaluation process among the other bidders.**

- 3. It transpired that the ePPS system does not allow a re-evaluation process after the first attempt was carried out, so that the Authority had no other option but to cancel the tender with the intention to issue a new one.**
  
- 4. First and foremost, this Board opines that every effort should be made to save the tender. Same Board acknowledges that, from the information given during the hearing, the Authority is being restricted to re-assess the remaining compliant offers due to the technical configuration of the ePPS system.**
  
- 5. This Board would also point out that since the offers have now been made public, a disadvantage to all is being created for participating in the new tender, so that, an equitable solution would be to re-evaluate the remaining offers through the manual evaluation process.**

**In conclusion, this Board opines that:**

- a) The tender should not be cancelled. In this respect, a manual re-evaluation process of all the remaining offers would offer a more equitable solution.**

- b) The cancellation of the tender, at this particular stage would prejudice future offers for new tender.**
  
- c) The principles of Good Governance in Public Procurement should never be restricted or suppressed by technical systems which do not allow continuity of transparency and adherence to the Public Procurement Regulations.**

**In view of the above, this Board,**

- i. upholds Appellants' contentions,**
  
- ii. does not uphold the Contracting Authority's decision to cancel the tender,**
  
- iii. directs that a re-evaluation of the existing compliant offers be carried through the manual procedure,**
  
- iv. directs that Appellants' offer be re-integrated in the evaluation process,**

**v. directs that the deposit paid by Appellants be fully refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*21 January 2020*